

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

the Uniform Sales Act — that is, a situation under section 15 or any other appropriate section wherein the vendee has placed reliance in the vendor as to the quality or the fitness of the goods and the vendee furnishes the goods which are later found to be defective and are returned because of the defect to the original vendor.

JON R. DOYLE
Assistant Attorney General

November 8, 1963

To: Paul A. MacDonald, Secretary of State

Re: Pin Ball Machine

Facts:

You have had some correspondence concerning a game known as "Japanese Pachinko." The game is non-coin operated and works by battery power. The player purchases 10 balls for 10 cents. A ball is inserted into the game and spun into action. There are 7 win and 1 lost pocket. There are 6 spin wheels and metal nails placed around the game area. When a ball drops in a win pocket additional balls drop out. The more balls a player obtains in this manner the better prize he wins.

Question:

Is this game a pin ball machine?

Answer:

No.

Opinion:

R. S. 1954, chapter 100, sections 68-A to 68-J provide for the licensing of pin ball machines by the clerk of the municipality where located.

Section 68-B defines a pin ball machine as — ". . . only those machines nominally denominated as such which, upon the insertion of a coin, slug token, plate or disc, may be operated by the public generally for use as game, entertainment or amusement, whether or not registering a score, and which is operated for amusement only and does not dispense any form of pay off, prize or reward except free replays."

As pointed out by the inquirer the game of "Japanese Pachinko" is non-coin operated. The player inserts only the playing balls. Also the machine can be said to dispense a "form of pay-off, prize or reward" in the form of extra balls which may be converted into prizes.

We agree, therefore, with the inquirer that "Japanese Pachinko" is not a pin ball machine which must be licensed in the municipality where located.

This conclusion does not assist the inquirer. However, it must be pointed out that the pin ball machine licensing law is an exception to the laws forbidding gambling. Any device similar to a pin ball machine but not coming within its definition is a gambling device and illegal.

Our court in *State v. Livingston*, 135 Maine 323 and 324, has quite simply stated the nature of one type of gambling device.

"If the player wins, the machine ejects the number of slugs shown by the illuminated number. It may be readily seen to what an extent chance plays a part in the winning of the tokens. In the first place, the lighting of a number by a mechanism which is entirely beyond the operator's control, determines whether or not the operator may have the easy chance to put a ball in the 10,000 hole; in the second place, the number of the tokens which the operator will receive is entirely determined by chance. Whether or not the player wins depends to some extent on his skill, to a very large extent on chance; and the amount of his winnings, if he is successful, depends entirely on chance.

"It would seem obvious that this machine is a gambling device. It is nonetheless one because skill is a factor in the player's success. We might as well say that playing cards for money is not gambling because the result is in part dependent on a player's skill. The law in this state is well settled that such a machine as this is a gambling device and comes within the prohibition of the statute. *State v. Baitler*, 131 Me. 285, 161 A., 671."

GEORGE C. WEST
Deputy Attorney General

November 13, 1963

To: Captain Ralph E. Staples, Director
Division of Special Services, Maine State Police

Re: Automobile Junk Yard or Automobile Graveyard Law R. S. 1954,
c. 100, § 138.

Facts:

Your memorandum dated November 8, 1963, wherein you request an opinion relative to automobile graveyards, is hereby acknowledged. One of your State Police Officers has a case pending in which there appears to be a question as to the fact situations to which the automobile graveyard law apply. You indicate that a ruling from this office would be of some assistance to the State Police.

Question:

Whether a pile of automobile engines consisting of more than three is considered a "junk yard" within the meaning of c. 100, § 138?

Answer:

Yes.

Opinion:

R. S. 1954, c. 100, § 138, as amended by P. L. 1963, c. 178, § 2, provides in part:

"No automobile junk yard or 'automobile graveyard' so called, where 3 or more unserviceable, discarded, worn-out or junked automobiles or bodies or engines thereof are gathered together, shall be established, operated or maintained, or permitted by the owner of any land to be established, operated or maintained . . ." (Emphasis supplied).